

Spain - Supreme Court, 24 February 2012, N° 1197/2011

Country of Decision:

Spain

Country of Applicant:

Nigeria

Date of Decision:

24-02-2012

Citation:

1197/2011

Court Name:

Supreme Court. Chamber for Contentious Administrative Proceedings, third section (Rapporteur: María Isabel Perelló Doménech)

Keywords:

Credibility assessment

Medical Reports/Medico-legal Reports

Standard of proof

Subsidiary Protection

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]

International Law

International Law > [1951 Refugee Convention](#) [1]

Headnote:

The case refers to an appeal to the Supreme Court brought by the appellant against the High National Court's decision to deny asylum.

The appellant is a Nigerian national and claims to have left her country because of armed confrontations between the group she belonged to (the Massob) and other armed groups. After a demonstration organised by the Massob to demand freedom and independence for the group, the government retaliated against the demonstrators, killing several people. Therefore, she decided to flee the country with her husband and one year old daughter. During the crossing in a small boat from Morocco to Spain, her daughter died. On these grounds the Supreme Court

recognised the appellant's right to remain in Spain on grounds of humanitarian considerations.

Facts:

The appellant is a Nigerian national and in her application claims to belong to the Massob group. She affirms that she decided to leave Nigeria along with her husband and one-year old daughter because she was in fear for her life. In effect, her fear of persecution was based on the armed confrontations occurring between the Massob and other armed groups in her city of origin. She claims that, after a demonstration organised by the Massob to demand freedom and independence for the group, the government retaliated against the demonstrators, killing several people including her husband's parents and brother. Therefore she expressed a fear for her life if she was to return to Nigeria. During the crossing from Morocco to Spain in a small boat, her fifteen-month-old daughter died.

The appellant has supplied a psychological report issued by the Red Cross which certifies the state of shock, severe depression and anxiety attacks suffered by the appellant when she arrived in Spain.

In effect, the report describes the appellant's serious psychological condition to be a result of the trauma caused by her daughter's death from hunger and thirst during the boat crossing, and from having to throw her daughter's body into the water, as well as those of other people in the same boat that had also died during the crossing.

An additional claim has also been submitted in which she declares herself to be pregnant.

Decision & Reasoning:

The Supreme Court affirms the denial of asylum as it deems the appellant's narrative of persecution to be contradictory and without verifiable information.

Therefore, the decision-making body corroborates the High National Court's contested judgment and rationale, as it deems that the appellant's claims do not sufficiently prove the existence of a fear of personal persecution or even provide circumstantial evidence thereof. In effect, the High National Court questions the existence, credibility and truthfulness of the alleged facts and above all queries the contradictions between the appellant's statements and those of her husband. Furthermore, it is argued that no logical explanation for the detected contradictions has been supplied, nor any suitable proof to demonstrate the certainty and credibility of the statements made in order to clarify the doubts described in the Investigation Report.

This leads the Chamber of the Supreme Court to exclude the existence of a fear of persecution and to deny any form of international protection to the appellant.

Amongst the motives for appealing the High National Court's decision, the appellant affirms that the discrepancies and contradictions occurring between her narrative and that of her husband are due to the disorientation suffered by both, particularly as a consequence of the suffering they have undergone and the psychological trauma suffered due to the tragic death of their daughter. She claims that her emotional state has influenced both her narrative and her statement describing the persecution.

Therefore the Supreme Court, whilst affirming the High National Court's decision in relation to the denial of asylum, recognises the existence of circumstances that permit the appellant and her young child born in Spain to reside in Spanish territory on the grounds of humanitarian considerations.

In effect, due to a digression in the legal evolution of the concept of "humanitarian considerations" as a reason for legal residence in Spain, and by virtue of the Red Cross psychological report (which the Supreme Court considers to be an objective report issued by an institution which carries out its activities under the protection of the Spanish state), the Supreme Court annuls the High National Court's judgment denying the appellant permission to reside in Spain on grounds of humanitarian considerations.

Outcome:

The court upholds the appeal brought by the appellant against the decision by the High National Court. The appeal against the Ministry of the Interior's decision to deny refugee status is partially upheld. The appellant's right and, by extension, the right of her Spanish-born daughter to reside in Spain on grounds of humanitarian considerations is recognised.

Observations/Comments:

The subject of this appeal is the judgment by the High National Court (section 8) on 7th February 2011, which had rejected administrative appeal number 669/2009 brought by the appellant against the Ministry of the Interior's decision of 6th October 2009 to refuse to recognise refugee status.

The Supreme Court's digression is of note, in regards to the development of international protection on grounds of humanitarian considerations based on Article 17(2) of Asylum Law 1984, modified in 1994.

For many years, this protection had been linked to situations that nowadays form part of the qualifications for subsidiary protection. However, from 2003 and more commonly from 2005, (due to a (non-legal) regulatory amendment and chiefly through case law) the Spanish asylum system went on to differentiate two opportunities for protection on grounds of humanitarian considerations:

- Firstly, the already mentioned and referenced humanitarian considerations connected to a situation of risk, conflict, instability or danger to the basic rights of the asylum seeker.

- Secondly (new), in connection with any case in which, in the light of the applicant's personal circumstances, there may be grounds for humanitarian considerations (without this being connected to refugee status or to subsidiary protection).

Lastly, the new Asylum Law of 2009 has configured the 'subsidiary protection' system in full accord with the Qualification Directive and furthermore extends the residence permit on grounds of solely humanitarian considerations.

Attachment(s):

 [STS 24.2.2012.pdf](#)[3]

Other sources cited:

Red Cross psychological report

National / Other Legislative Provisions:

[Spain - Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado \(Act regulating the right to asylum and refugee status\)](#) [4]

[Spain - Royal Decree 203/1995](#) [5]

[Spain - Asylum Law 12/2009](#) [6]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/STS%2024.2.2012.pdf>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4421>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4422>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1850>